## APPENDIX.

General Power of Eminent Domain of State Highway Commissioner of Virginia.

Virginia Code 1942, Sec. 1969j(1).

"The State Highway Commissioner * * * is hereby vested with the power of eminent domain insofar as may be necessary for the construction, reconstruction, alteration, maintenance and repair of the public highways of the State, and for these purposes and all other purposes incidental thereto, may condemn property in fee simple and rights of way of such width and on such routes and grades and locations as by said Commission may be deemed requisite and suitable, including locations for permanent, temporary, contiguous or periodical use. * * *"

Statute Authorizing Postponement of Condemnation Proceedings Sec. 1969j(4), (6) (ante p. 6).

Virginia Mill Statutes Code 1942, Sections 3582-3589, 3594, 3594a, 3595.

Section 3582:

"A person having upon lands owned by him on a water course, or proposing to build on such lands, a water mill, or other machine, manufactory, or engine, useful to the public, and desiring leave to erect a dam across, or in such water course (whether he own the lands on either side of the water course at the point where such dam is to be erected or not), or to cut or enlarge a canal through lands above or below, or to raise a dam which may have been erected under an order of court, or the owner of any such water mill, machine, manufactory, or engine, located on a water course, having the right to the use of such water course for the operation of his said mill, machine, manufactory, or engine, and desiring leave to construct a work in or through the lands of another for the purpose of conning the water course within its customary channel or restoring it thereto where it has been diverted therefrom not more than three years by floods or other natural causes, may apply for such leave to the circuit court of the county wherein such mill, machine, manufactory, or engine stands, or is proposed to be built."

Sections 3583-3588 (Provision for notice, appointment of commissioners and for report fixing the compensation to be paid for the damage to landowners.)

Section 3589:

"The applicant, to whom any such leave is granted, shall, upon paying to the several parties entitled thereto the compensation so ascertained become seized in fee simple of the land circumscribed by the commissioners, and be authorized to proceed according to such leave."

Section 3594:

"At every mill which grinds grain, whether the same be established under an order of the court or not, there shall be well and sufficiently ground all grain brought to the mill for the consumption, when ground, of the person bringing or sending it or his family, and in due turn as the same is brought. All clean wheat of a merchantable quality, weighing not less than sixty pounds to the bushel, brought to the mill as aforesaid, shall be ground as the party bringing the same shall direct, into so much of the best, extra, superfine, or family flour as the wheat will produce; and there shall not be taken for the toll more than one-eighth part of any grain of which the remaining part is ground into the extra or family flour, nor of any grain of which the remaining part is ground into super flour or meal, nor more than one-sixteenth of any grain of which the remaining part is ground into hominy or malt. If, however, any mill cannot without a great inconvenience, grind wheat into the best flour for toll as aforesaid, the owner of the said mill may elect to exchange flour for wheat, provided that such exchange shall be at the same rate of toll as above set forth, the quality of the flour determined by inspections, if required. If, at any mill, there be a violation of this section, in any respect, the proprietor thereof shall for every such violation, forfeit to the party injured ten dollars; but with these provisions, that the proprietor shall not be obliged to run more than one pair of stones or rollers to grind grain brought to his mill for the consumption of the person bringing or sending it, or their families, and that such proprietor may grind grain for the consumption of his family in

preference to that of others. (Code 1887, Sec. 1359; 1918, p. 450; 1920, p. 574; 1932, p. 886.)

Section 3594a:

"The State Corporation Commission is hereby authorized and empowered upon the complaint of any person or corporation affected by the provisions of the Act of 1932 amending the preceding section, or upon information from the Commissioner of Agriculture, to cause an investigation to be made of the practices of persons or corporations engaged in the business of grinding grain, and, from time to time, to promulgate rules and regulations to govern and control such practices, and to fix and establish from time to time, such rate, or rates of toll as in the judgment of said commission may be reasonable and proper.

"An appeal may be taken from such action of said commission in the same manner as appeals may now be taken to the Supreme Court of Appeals of Virginia. (1932, p. 886)"

Section 3595:

"The circuit court of any county, or the circuit or corporation court of any city or town in which is situated any mill which is adapted to and used for the exclusive purpose of manufacturing flour, may, upon the application of the owner or occupier of any such mill, release and discharge such owner or occupier from the obligation to grind, upon toll, corn or any other grain except wheat, or grind, upon toll, any wheat which is in a rotten or damaged state: provided, that the court granting such privilege may at any time, upon good cause shown, rescind such order."

Statement in Attorney General's Brief upon which the Court Relied.

"There are three questions involved in the case: * * * Third, whether the provisions of Section 4 of Chapter 380 of the Acts of Assembly of Virginia of 1940 are constitutional.

"In our argument we will deal with the questions in the order above mentioned * * *.

"Before proceeding with our argument, we wish to point out to the Court that the third question, insofar as this case is concerned, has become largely academic. It was contended in the lower court that the statutory provision allowing the State Highway Commissioner to take possession of land prior to the institution of condemnation proceedings is unconstitutional, and the appellant sought to obtain an injunction to restrain the Commissioner from proceeding thereunder. The basis of the appellant's contention was an allegation that the statute permitted an undue delay in the institution of condemnation proceedings.

"Since the decision by the lower court and the granting of an appeal by this Court, the highway has been completed and condemnation proceedings have been instituted. At the instance of the landowner, the appellant in this case, action in the condemnation proceedings has been held up by the lower court pending a decision in this case.

"Since the right of the State Highway Commissioner to condemn the land of the appellant in view of the alleged use of such land for another public use is also involved in this appeal, that action of the lower court was, of course, proper. However, the constitutional question raised by the appellant has no bearing upon the right to condemn the land and it is to be noted that the postponement of the actual acquisition of title to the land is no longer due to the action of the State Highway Commissioner, but to the action of the appellant.

"If this Court should disagree with the contention of the appellant as to the right of the Commissioner to condemn the land in question, then, even if this Court should hold that the statute allowing the Commissioner to take possession before condemning the property is not valid, no substantial gain would result to the appellant, as it would then be necessary only to carry to a conclusion the condemnation proceedings which have already been instituted.

"This question has not, of course, become moot since title to the land has not yet actually been acquired, but the question is no longer of great importance in this particular case * * *."